

## Employment and Training Administration, Labor

## § 656.2

656.32 Revocation of approved labor certifications.

### Subpart D—Determination of Prevailing Wage

656.40 Determination of prevailing wage for labor certification purposes.

656.41 Review of prevailing wage determinations.

AUTHORITY: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101-649, 109 Stat. 4978; and Title IV, Public Law 105-277, 112 Stat. 2681.

SOURCE: 69 FR 77386, Dec. 27, 2004, unless otherwise noted.

### Subpart A—Purpose and Scope of Part 656

#### § 656.1 Purpose and scope of part 656.

(a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA or Act) (8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain immigrant visas for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Secretary of Homeland Security that:

(1) There are not sufficient United States workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this part set forth the procedures through which such immigrant labor certifications may be applied for, and granted or denied.

(c) Correspondence and questions about the regulations in this part should be addressed to: Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210.

[69 FR 77386, Dec. 27, 2004, as amended at 71 FR 35522, June 21, 2006]

#### § 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a) *Description of the Act.* The Act (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Secretary of Homeland Security and the Secretary of State as the principal administrators of its provisions.

(b) *Burden of proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) provides, in pertinent part, that:

Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act \* \* \*.

(c)(1) *Role of the Department of Labor.* The permanent labor certification role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act may not be admitted unless the Secretary of Labor has first certified to the Secretary of State and to the Secretary of Homeland Security that:

(i) There are not sufficient United States workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) This certification is referred to in this part 656 as a "labor certification."

(3) We certify the employment of aliens in several instances: For the permanent employment of aliens under this part; and for temporary employment of aliens for agricultural and nonagricultural employment in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii), under the DHS regulation at 8 CFR 214.2(h)(5) and (6) and sections 101(a)(15)(H)(ii), 214, and 218 of the